



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 30, 1996

Ms. Betsy Elam
Fielding, Barrett & Taylor, L.L.P.
3400 Bank One Tower
500 Throckmorton Street
Fort Worth, Texas 76102-3821

OR96-0636

Dear Ms. Elam:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38747.

The City of Burleson (the "city"), whom you represent, has received a request for information regarding internal affairs investigations of a specified former police officer employed by the city. You have released some of the requested information, but contend that the remaining information is excepted from disclosure under section 552.101 of the Government Code.

Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. You argue that disclosure of the information relating to the investigation identified as IA 96-01 would violate the common-law privacy interests of an alleged victim of assault. Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

We have reviewed the documents relating to the alleged assault. We agree that some of the information is intimate and embarrassing and of no legitimate public interest. We have marked the information that you must withhold under the common-law privacy aspect of section 552.101 of the Government Code.

You next argue that common-law privacy excepts from required public disclosure the submitted information regarding an investigation of alleged family violence, IA 95-06. An assault by one family member on another is a crime, not a family matter normally considered private. Open Records Decision No. 611 (1992). We conclude that none of the information you presented us regarding the incident of alleged spousal abuse is highly intimate and embarrassing and of no public interest. Therefore, you may not withhold the investigation of the alleged spousal abuse under common-law privacy.

You next claim that the records of the investigation identified as 95-ADM-07 must be withheld pursuant to the informer's privilege and/or section 51.14(d) of the Family Code. We first address your arguments regarding the alleged juvenile offenders. At the time the conduct occurred, the applicable law in effect was Family Code section 51.14 which provided, in pertinent part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public.

Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852, *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Sess. Law Serv. 2517, 2590. In Open Records Decision No. 181 (1977) at 2, this office held that former section 51.14(d) excepts police reports which identify juveniles or furnish a basis for their identification. *See also* Open Records Decision No. 394 (1983) at 4-5 (applying former Fam. Code § 51.14(d) to "police blotter" and related information). You do not indicate that the offense reports at issue here relate to charges for which the city transferred the juveniles under section 54.02 of the Family Code¹ to a criminal court for prosecution, nor that article 15.27 of the Code of Criminal Procedure² applies. Moreover, we do not understand any of the exceptions to former section 51.14(d) to apply here. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (*repealed* 1995) (former Fam. Code § 51.14(d)(1), (2), (3)).

¹Act of May 25, 1973, 63d Leg., R.S., ch. 544, § 1, 1973 Tex. Gen. Laws 1460, 1476-77, *amended by* Act of May 19, 1975, 64th Leg., R.S., ch. 693, §§ 15-16, 1975 Tex. Gen. Laws 2152, 2156-57 (adding subsecs. (m), (j), (k), (l)), *amended by* Act of May 8, 1987, 70th Leg., R.S., ch. 140, §§ 1-3, 1987 Tex. Gen. Laws 309 (amending subsecs. (a), (h), (j)).

²Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 1, 1993 Tex. Gen. Laws 1850-51.

We note, however, that some of the records submitted for our review do not reference juvenile conduct. Section 51.02 provides that in title 3 of the Family Code "child" has the following meaning:

(1) "Child" means a person who is:

(A) ten years of age or older and under 17 years of age; or

(B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

Title 3 of the Family Code governs delinquent children and children in need of supervision. However, a child cannot be declared to be a delinquent child subject to a proceeding under title 3 unless he is within the age limit set forth in the statute. *See Steed v. State*, 183 S.W.2d 458, 460 (Tex. 1944); *Ballard v. State*, 192 S.W.2d 329, 330 (Tex. Civ. App.--Amarillo 1946). Some of the information submitted for our review concerns individuals who do not fit within the statutory definition of a child for purposes of section 51.14(d). Accordingly, we conclude that the city must withhold under section 51.14(d) the information concerning "children" as defined in section 51.02 of the Family Code. We have marked this information for your convenience.

You also claim that the witness statements in the investigation identified as 95-ADM-07 may be withheld under the informer's privilege. Because we conclude that the witness statements and identities of the "children" must be withheld under section 51.14(d) of the Family Code, we address here only the witness statements of the other individuals involved in the incident. The informer's privilege protects the identity of persons who report violations of the law to officials having the duty of enforcing particular laws. *See Roviato v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege does not, however, apply to information that does not describe illegal conduct. Open Records Decision No. 515 (1988) at 5. Furthermore, once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. Open Records Decision No. 202 (1978) at 2. Significantly, however, the informer's privilege protects the content of the communication only to the extent that it identifies the informant. *Roviato*, 353 U.S. at 60.

We have reviewed the statements submitted for our review. It appears that the identities of the informers are known to the subject of the communication because he has reviewed the statements. You may therefore not withhold the remaining statements under the informer's privilege aspect of section 552.101 of the Government Code. Moreover, as Family Code section 51.14(d) excepts from disclosure any information in the file that could be withheld on the basis of common-law privacy, the remaining information in the investigation identified as 95-ADM-07 must be released.

Upon reviewing the remaining requested information, we believe that some of the information is confidential pursuant to section 611.002 of the Health & Safety Code, which makes confidential certain mental health records. We have marked the documents accordingly.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 38747

Enclosures: Marked documents

cc: Ms. Sally Ellerston
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